

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:  <b>CITY OF DIAGONAL</b> Ringgold County, Iowa	ADMINISTRATIVE CONSENT ORDER  NO. 2014-AQ- <i>19</i> NO. 2014-SW- <i>14</i>
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TO: Lowell Johnson, Mayor  
City of Diagonal  
103 South Broadway  
Diagonal, Iowa 50845

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and the City of Diagonal (City) for the purpose of resolving the air quality and solid waste violations which occurred during the demolition and burning of the United Church of Diagonal. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

**Relating to technical requirements:** **Relating to legal requirements:**

Tom Wuehr  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Windsor Heights, Iowa 50324  
Phone: 515/725-9576

Kelli Book, Attorney for the DNR  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Windsor Heights, Iowa 50324  
Phone: 515/725-9572

**Payment of penalty to:**

Iowa Department of Natural Resources  
Henry A. Wallace Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

**II. JURISDICTION**

Pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; Iowa Code section 455B.307(2) which authorizes the Director to issue any order necessary

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to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties, DNR has jurisdiction to issue this administrative consent order.

**III. STATEMENT OF FACTS**

1. The City's volunteer fire department, in connection with the United Church of Diagonal (Church), demolished and burned the Church building located at 400 Adams Street, Diagonal, Iowa, as well as a single-family dwelling adjacent to the Church located at 404 Adams Street, Diagonal, Iowa. The single-family dwelling was owned by the Church.

2. On October 4, 2013, DNR Field Office 4 referred a complaint to DNR Air Quality Bureau regarding the burning of the Church and the single-family dwelling. The complainant also stated that the building and house was demolished and burned without complying with the asbestos regulations. The complainant provided the location of the building and house and provided photographs of the fire.

3. On October 9, 2013, Tom Wuehr, DNR Air Quality environmental specialist, investigated the complaint. During the inspection, Mr. Wuehr discovered that members of the City's fire department and Church members burned the Church building and the house. The debris from the burning was buried on-site. There was no asbestos inspection conducted prior to the demolition and burning and there was no notification submitted to the DNR prior to the demolition. The two properties had already been covered with fill and there were several pieces of equipment on-site as a dump truck continued to bring in fill. There were pieces of brick and cement scattered throughout the site. Mr. Wuehr spoke to Jerry Stevens, the bulldozer operator. Mr. Stevens stated he was a member of the Church's congregation and was volunteering his time and equipment for the backfill operation. Mr. Wuehr asked about the materials in the Church and Mr. Stevens stated there was 9x9 floor tile in the basement of the Church. Mr. Stevens provided the name of the mayor, Lowell Johnson and the fire chief, Mitch England.

4. On October 10, 2013, Mr. Wuehr contacted Mayor Johnson and had several conversations with him in the following weeks regarding the demolition and open burning. Mayor Johnson confirmed that the Diagonal Fire Department, in conjunction with the Church, was in charge of the burning of the Church and house. Mayor Johnson told Mr. Wuehr that the City had "screwed up."

5. On October 29, 2013, Brian Hutchins, Air Quality Compliance Supervisor, and Mr. Wuehr met with Mayor Johnson, Mr. England, J.P. Whittington, Church board member, and Shelly Bontly, Church building committee member. Mr. Wuehr explained what he found during the investigation. Mayor

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Johnson stated that he recalled that he and Mr. Wuehr had talked about the open burning regulations about four years ago. Mr. Wuehr explained the asbestos and open burning regulations and stated that the demolition and burning of the building and house may have exposed people to asbestos. Mr. Wuehr and Mr. Hutchins provided ways that the City and Church could come into compliance. They explained the cost of excavating the debris and transporting it to the landfill would be cost prohibitive; therefore the best option was to designate the area where the building and the house were buried as a permanent inactive asbestos landfill. Ms. Bontly asked what the ramifications of the demolition and open burning would be. Mr. Wuehr explained that the matter was being referred to DNR's Legal Services Bureau. Mr. Wuehr agreed to return to the City as part of an outreach and follow-up to the initial inspection.

6. On November 4, 2013, Mr. Wuehr returned to the City and met with Mayor Johnson, Mr. England, Mr. Whittington, and Ringgold County Sheriff, Mike Sabadka. Mr. Wuehr surveyed the area and did not observe any obvious suspect material. Mr. Wuehr stated that the Church could continue with the construction of the new building provided that the area where the old building and house debris was buried remained off limits to any kind of disturbance.

7. On November 18, 2013, DNR issued a Notice of Violation letter to the City for the open burning and asbestos violations.

#### IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-35 relating to air quality.

2. Iowa Code section 455B.133 provides for the Commission to establish rules governing the quality of air and emission standards. Pursuant to Iowa Code section 455B.133, 567 IAC 23.1(3) was established, which adopts by reference the federal regulations regarding asbestos removal. The United States Environmental Protection Agency has delegated to the State of Iowa the authority to implement and enforce the demolition and renovation portions of the federal National Emission Standards for Hazardous Air Pollutants (NESHAP), found at 40 CFR part 61, subpart M.

3. 40 CFR section 61.145(a) specifies that the owner or operator of a demolition or renovation activity shall thoroughly inspect a regulated facility for the presence of asbestos prior to the commencement of demolition or renovation. The DNR has no evidence that an asbestos inspection was ever completed prior to the demolition of the Church building. The above facts indicate a violation of this provision.

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4. 40 CFR section 61.145(b)(1) requires written notification to be submitted to the DNR prior to beginning renovation. The specific requirements for this notification are contained in the subsection. The DNR has no evidence that a notification was ever submitted prior to the demolition of the Church building. The above facts indicate a violation of this provision.

5. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2) (variances) and 23.2(3) (exemptions). 567 IAC 23.2(3)(j) provides an exemption for controlled burning of a demolition building. The Church building and house were demolished without complying with any of the requirements. The open burning of the Church building and house did not qualify for the open burning exemption. Therefore, the above-facts indicate violations of this provision.

6. Iowa Code section 455B.304 provides that the Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted such rules at 567 IAC chapters 100-123.

7. 567 IAC 100.4 prohibits a private or public agency from dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director. The City burned the Church building and house and buried the debris on-site rather than taking the demolition debris to a permitted landfill. The above facts demonstrate noncompliance with this provision.

**V. ORDER**

THEREFORE, it is hereby ordered and the City agrees to do the following:

1. The City shall pay a penalty of \$4,000.00. \$1,000.00 of the penalty shall be paid to the DNR within 60 days of the date the Directors signs this administrative consent order. In lieu of payment of the remaining \$3,000.00, the City shall:

Conduct a Supplemental Environmental Project (SEP). The SEP shall consist of a payment to the Ringgold County Conservation Board. The City shall make a payment of \$3,000.00 to the Ringgold County Conservation Board within 60 days of the date the Director signs this administrative consent order. Once the payment is made, the City shall submit a receipt of payment to Kelli Book, attorney for the DNR.

**VI. PENALTY**

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. Iowa Code section 455B.146A provides for more serious criminal sanctions

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for the air quality violations. 455B.307(3) provides for civil penalties of up to \$5,000.00 per day for solid waste violations involved in this matter.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this rule, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with a \$4,000.00 penalty. The administrative penalty assessed by this administrative consent order is determined as follows:

Economic Benefit - 567 IAC chapter 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that "where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit." 567 IAC 10.2(1) further states, "reasonable estimates of economic benefit should be made where clear data are not available." Since the City was not the owner of the building and was only assisting the Church with the demolition and burning of the Church building and house; it is likely the City did not receive any economic benefit from its involvement. Therefore, no amount is being assessed for this factor.

Gravity of the Violation – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. Open burning of solid waste results in the release of large amounts of particulates, carbon monoxide, and hydrocarbons. Such open burning may violate ambient air standards. Open burning releases toxins which pollute the air, may pollute groundwater, and pose a risk to human health and the environment. Improper disposal of solid waste creates nuisance conditions for surrounding property owners and the potential contamination of soil and groundwater. Asbestos is known to cause cancer and is a hazardous air pollutant. Failure to inspect for asbestos and notify prior to demolition has caused possible asbestos fibers to be released into the air through the renovation. These violations threaten the integrity of the regulatory program because compliance with the open burning, solid waste, and asbestos regulations is required of all persons in this state. Based on the above considerations, \$2,000.00 is assessed for this factor.

Culpability – The City has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that its conduct is subject to DNR's rules. Mayor Johnson indicated in a meeting that he recalls discussing the open burning regulations with the DNR prior to this incident. Based on the above considerations, \$2,000.00 is assessed for this factor.

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**VII. WAIVER OF APPEAL RIGHTS**

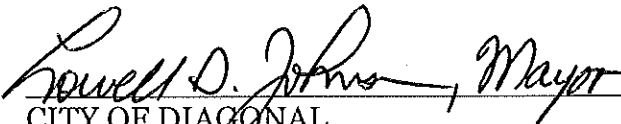
This administrative consent order is entered into knowingly and with the consent of the City. For that reason, the City waives the rights to appeal this administrative consent order or any part thereof.

**VIII. NONCOMPLIANCE**

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146 and 455B.307.

  
CHUCK GIPP, DIRECTOR  
Iowa Department of Natural Resources

Dated this 30<sup>th</sup> day of  
July, 2014.

  
CITY OF DIAGONAL

Dated this 29 day of  
May, 2014.

Kelli Book; Tom Wuehr; DNR Field Office 4; EPA; VII.C.4, VI.C, and VII.C.1